



PERIODIC REVIEW

**Port Orchard Retail Building
Facility Site ID#: 991692**

**624/626 Bay Street,
Port Orchard, Washington**

Northwest Region Office

TOXICS CLEANUP PROGRAM

September 2010

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1.0 INTRODUCTION

This document is a review by the Washington State Department of Ecology (Ecology) of post-cleanup Site conditions and monitoring data to ensure that human health and the environment are being protected at the Port Orchard Retail Building (Site). Cleanup at this Site was implemented under the Model Toxics Control Act (MTCA) regulations, Chapter 173-340 Washington Administrative Code (WAC).

Cleanup activities at this Site were completed under the Voluntary Cleanup Program (VCP). The cleanup actions resulted in concentrations of petroleum hydrocarbons remaining at the Site which exceed MTCA cleanup levels. The MTCA cleanup levels for soil are established under WAC 173-340-740. The MTCA cleanup levels for groundwater are established under WAC 173-340-720. WAC 173-340-420 (2) requires that Ecology conduct a periodic review of a Site every five years under the following conditions:

- (a) Whenever the department conducts a cleanup action
- (b) Whenever the department approves a cleanup action under an order, agreed order or consent decree
- (c) Or, as resources permit, whenever the department issues a no further action opinion, and one of the following conditions exists:
 - 1. Institutional controls or financial assurance are required as part of the cleanup;
 - 2. Where the cleanup level is based on a practical quantitation limit; or
 - 3. Where, in the department's judgment, modifications to the default equations or assumptions using Site-specific information would significantly increase the concentration of hazardous substances remaining at the Site after cleanup or the uncertainty in the ecological evaluation or the reliability of the cleanup action is such that additional review is necessary to assure long-term protection of human health and the environment.

When evaluating whether human health and the environment are being protected, the factors the department shall consider include [WAC 173-340-420(4)]:

- (a) The effectiveness of ongoing or completed cleanup actions, including the effectiveness of engineered controls and institutional controls in limiting exposure to hazardous substances remaining at the Site;
- (b) New scientific information for individual hazardous substances or mixtures present at the Site;
- (c) New applicable state and federal laws for hazardous substances present at the Site;
- (d) Current and projected Site use;
- (e) Availability and practicability of higher preference technologies; and
- (f) The availability of improved analytical techniques to evaluate compliance with cleanup levels.

The Department shall publish a notice of all periodic reviews in the Site Register and provide an opportunity for public comment.

2.0 SUMMARY OF SITE CONDITIONS

2.1 Site Description and History

The building is one building structure which has two addresses, 624 and 626 Bay Street in Port Orchard, and has a concrete block and frame building structure with a 5 inch concrete reinforced slab. County records show the building as being constructed in 1940. The building is triangular shaped. It covers approximately 95% of the real property area. The County records show the improvement area as 5141 square feet. The real property area is shown on the County records as 7319 square feet or .16 acres. The building at the time of cleanup had two tenant spaces: one occupied by a retail rug store and installer, and one was vacant. Currently, both spaces are occupied: 624 Bay Street is used by About Floors, Inc., and 626 Bay Street is used by Westsound CrossFit.

There is approximately 1500 square feet in front of the building adjacent to the City sidewalk. This area in front of the building had been used for tenant and customer parking continuously. Since 1994 to the time of cleanup there had been a retail rug store and physical exercise facility. The long term main use was Peninsula Glass and Pete's Gun Shop. The County records indicate these users occupied the building as far back as 1953 to the mid 1990's.

The gasoline facilities were not in operation during the occupancy of the Glass and Gun shop; accordingly, the gasoline station type use could only have been prior to the Glass shop and Gun Shop uses. The gasoline station use would only have occurred during a 13 year period, i.e., from the time it was constructed until the Glass and Gun shop took occupancy.

2.2 Site Investigations and Sample Results

There are three buried gas tanks (USTs) located in front of the existing building. The tanks were filled with clean sand in the early 1960's. No odors came from the tanks upon examination, according to Sound Renovation in their November 21, 2002 report. The prior owner stated that the tanks were pumped before sand fill and inspected. The owners at the time of cleanup contacted Ecology prior to purchase of the premises to determine what the responsibilities of the purchaser may be regarding the Site. Ecology representatives stated that the Site was not regulated for UST closure, and that the sand filling of the tanks in the early 1960's was prior to notice requirements to Ecology, and no Site Assessment, test, or inspection was required. The owner's representative met with an Ecology representative and an environmental specialist on-Site in the fall of 1999 to view the Site and inspect the tanks. The tanks were clean sand filled and no odors came from the tanks on this or subsequent inspections.

The owners were approached by prospective purchasers who had contacted Ecology to confirm that no affirmative action was required at the Site by Ecology. This was confirmed, but the prospective purchasers then requested a Phase I or satisfactory testing in order to obtain financing.

The work commenced on-Site at approximately 9 AM and tests collected between 11:30 AM and 1:30 PM on the November 21, 2002. Clean up and filling test holes were completed approximately 2:30 PM the same day.

The testing involved jack-hammering the 4 inch concrete parking area to start test holes. Three test hole locations were selected: two near the buried tanks and one in front of the garage doors. Test holes were augered to 6 feet in depth. Sampling instructions from Water Management Lab of Tacoma were to obtain samples at the depth of 6 feet; however, one was taken at 3 foot in depth. The 9 inch auger was 6 foot in length and powered by a Bobcat.

Generally the soils in front of the building in the test area were fill materials (sand and gravel generally described as construction grade fill materials) to a depth of approximately 4 feet. The parking area in front of the building is 5 inches of reinforced concrete. Between 5 to 6 feet there is approximately a one foot layer of peat type brown soil with decomposed small roots compacted into the peat. This peat was located at the bottom of all three test holes. The test holes were filled with the materials extracted. Concrete patches were made at the 3 test pit Sites after settling.

There were signs of petroleum type products in the soils during the drilling process and a faint petroleum type smell in one of the holes (#2 test hole). The owner's property manager reported that in the fall of 1999 Rene LaMarch and Judy Aitkin from Ecology examined the Site and Mr. LaMarch confirmed lack of petroleum products in the existing tanks.

2.3 Cleanup Actions

There is no record in Ecology files of any active cleanup action. The sample results were negative for petroleum; however, due to the situation with marketability and the signs of petroleum in soils, it was assumed that there was a release of petroleum confined under the concrete slab and possibly the building. Conservatively, a restrictive covenant was deemed necessary to ensure protectiveness. A 'No Further Action' letter was issued by Ecology on June 6, 2003 after the restrictive covenant was recorded with the county.

2.4 Cleanup Levels

MTCA Method A cleanup standards were used for comparison purposes to determine protectiveness.

2.5 Restrictive Covenant

Based on the Site use, surface cover and cleanup levels, it was determined that the Site was eligible for a 'No Further Action' determination if a Restrictive Covenant was recorded for the property. A Restrictive Covenant was recorded for the Site in 2004 which imposed the following limitations:

Section 1.

1. Since the ground water on the property has not been sampled, and the Site is in close proximity to Sinclair Inlet (Puget Sound), no groundwater may be taken for domestic , agriculture, or any use that may be considered harmful for human use or the environment.

2. A greater portion of the Property may contain petroleum contaminated soil that is above Method A or B residential Cleanup Levels and is located under the building's concrete pad which covers 95% of the Property. The owners shall not alter, modify, or remove the existing structure in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior approval from Ecology.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or creates a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owners must restrict leases to uses and activities consistent with the restrictive covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owners must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owners shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Remedial Action.

Section 8. The Owners of the Property reserve the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

The Restrictive Covenant is available as Appendix 6.4.

3.0 PERIODIC REVIEW

3.1 Effectiveness of completed cleanup actions

The Restrictive Covenant for the Site was recorded and is in place. This Restrictive Covenant prohibits activities that will result in the release of contaminants at the Site without Ecology's approval, and prohibits any use of the property that is inconsistent with the Covenant. This Restrictive Covenant serves to ensure the long term integrity of the remedy.

Based upon the Site visit conducted on September 29, 2010, the remedy at the Site continues to eliminate exposure to contaminated soils by ingestion and contact. The concrete appears in satisfactory condition and no repair, maintenance, or contingency actions have been required. The Site is still operating as a retail building. A photo log is available as Appendix 6.5.

Soils with TPH concentrations higher than MTCA cleanup levels are still present at the Site. However, the remedy prevents human exposure to this contamination by ingestion and direct contact with soils. The Restrictive Covenant for the property will ensure that the contamination remaining is contained and controlled.

3.2 New scientific information for individual hazardous substances for mixtures present at the Site

There is no new scientific information for the contaminants related to the Site.

3.3 New applicable state and federal laws for hazardous substances present at the Site

The cleanup at the Site was governed by Chapter 173-340 WAC. WAC 173-340-702(12) (c) [2001 ed.] provides that,

“A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provision in this chapter on cleanup levels, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.”

Although cleanup levels changed for petroleum hydrocarbon compounds as a result of modifications to MTCA in 2001, contamination remains at the Site above the new MTCA Method A and B cleanup levels. Even so, the cleanup action is still protective of human health and the environment. A table comparing MTCA cleanup levels from 1991 to 2001 is available below.

Analyte	1991 MTCA Method A Soil Cleanup Level (ppm)	2001 MTCA Method A Soil Cleanup Level (ppm)	1991 MTCA Method A Groundwater Cleanup level (ppb)	2001 MTCA Method A Groundwater Cleanup Level (ppb)
Cadmium	2	2	5	5
Lead	250	250	5	15
TPH	NL	NL	1000	NL
TPH-Gas	100	100/30	NL	1000/800
TPH- Diesel	200	2000	NL	500
TPH-Oil	200	2000	NL	500

NL = None listed

3.4 Current and projected Site use

The Site is currently used for [insert use, like: commercial and industrial] purposes. There have been no changes in current or projected future Site or resource uses.

3.5 Availability and practicability of higher preference technologies

The remedy implemented included containment of hazardous substances, and it continues to be protective of human health and the environment. While higher preference cleanup technologies may be available, they are still not practicable at this Site.

3.6 Availability of improved analytical techniques to evaluate compliance with cleanup levels

The analytical methods used at the time of the remedial action were capable of detection below selected Site cleanup levels. The presence of improved analytical techniques would not affect decisions or recommendations made for the Site.

4.0 CONCLUSIONS

The following conclusions have been made as a result of this periodic review:

- The cleanup actions completed at the Site appear to be protective of human health and the environment.
- Soils cleanup levels have not been met at the standard point of compliance for the Site; however, the cleanup action has been determined to comply with cleanup standards since the long-term integrity of the containment system is ensured, and the requirements for containment technologies are being met.
- The Restrictive Covenant for the property is in place and continues to be effective in protecting public health and the environment from exposure to hazardous substances and protecting the integrity of the cleanup action.

Based on this periodic review, the Department of Ecology has determined that the requirements of the Restrictive Covenant continue to be met. No additional cleanup actions are required by the property owner. It is the property owner's responsibility to continue to inspect the Site to assure that the integrity of the remedy is maintained.

4.1 Next Review

The next review for the Site will be scheduled five years from the date of this periodic review. In the event that additional cleanup actions or institutional controls are required, the next periodic review will be scheduled five years from the completion of those activities.

5.0 REFERENCES

A letter submitted by David Parkins of Sound Renovations explaining the results of sampling the area in front of the two businesses at 624 and 626 Bay Street in Port Orchard, Washington, November 21, 2002;

Analysis of Four Soil Samples taken at 624 and 626 Bay Street, Port Orchard, WA, submitted by Water Management Laboratories, Inc., on December 4, 2002;

2004 Restrictive Covenant;

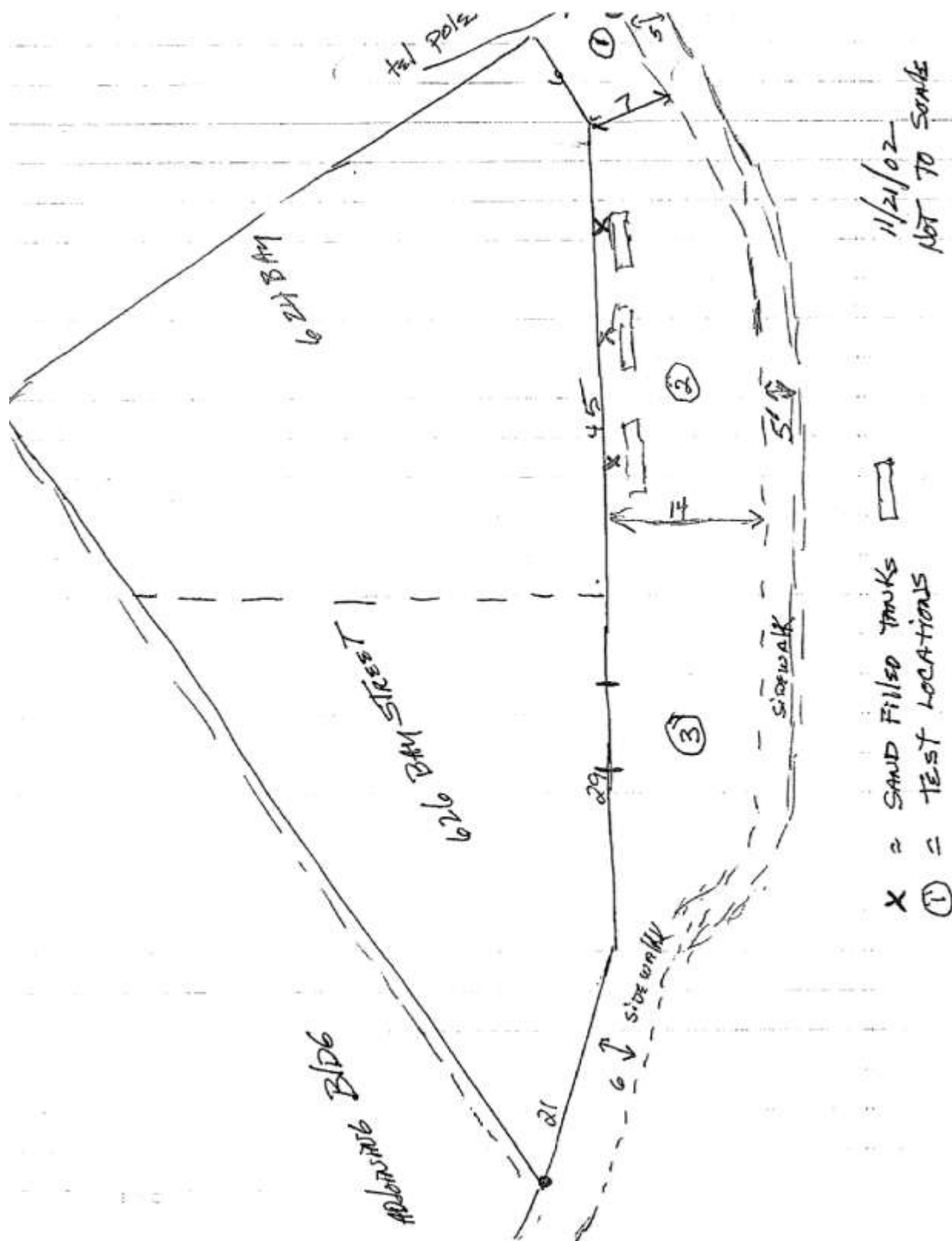
Ecology, 2010 Site Visit.

6.0 APPENDICES

6.1 Vicinity Map



6.2 Site Plan



6.3 TPH-Dx Concentration Map

not available

6.4 Environmental Covenant



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Kitsap Co, WA

FILED AT REQUEST OF ROCK CALEY
8852 SE VIEW PARK RD.
PORT ORCHARD, WA.

Ref #

Type of Document: Restrictive Covenant

Names of Parties: Grantors: Estate of John Shiach, Elve Fathers; Colvos Properties, at
Trust – Tenants in Common

Tax Lot # 46500090050001

Legal Description: Lot 5 Bl 9, SM Stevens Town of Sidney as per plat in Vol 1 of Plats
Page 1 Records Kitsap County Washington.

RESTRICTIVE COVENANT CITY OF PORT ORCHARD RETAIL BUILDING

THIS DECLARATION of Restrictive Covenants is made pursuant to RCW 70.105D.030 (1) (f) and (g) and WAC 173-340-440 by Estate of John Shiach, Elve Fathers, and Colvos Properties, a Trust as tenants in common hereafter referred to as the current owners, their heirs, successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following documents:

1. A letter submitted by David Parkins of Sound Renovations explaining the results of sampling the area in front of the two businesses at 624 and 626 Bay Street in Port Orchard, Washington, November 21, 2002.
2. Analysis of Four Soils Samples taken at 624 and 626 Bay Street, Port Orchard, WA. Submitted by Water Management Laboratories, Inc. on December 4, 2002.
3. Site visit by Judith M. Aitken in the fall of 1999. These documents are on file at Ecology's NWRO.

This Restrictive Covenant is required because the Remedial Action did not address contamination that may occur under the concrete base or floor of the building. This could result in concentrations of petroleum, in the soil and groundwater, that will exceed the Model Toxics Control Act Standard Method B soil cleanup levels as establish under WAC 173-340-740 and the Standard Method B ground water cleanup levels as established under WAC 173-340-720.

The undersigned owners of the real property (hereafter "Property" in the County of Kitsap, State of Washington that is subject to this Restrictive Covenant is described as: Lot 5 Block 9, SM Stevens Town of Sidney as per Plat in Vol. 1 of Plats page 1 records of Kitsap County Washington.

The undersigned owners make the following declaration as to limitations, restrictions, and uses to which the property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owners").

Section 1.

1. Since the ground water on the property has not been sampled and the site is in close proximity to Sinclair Inlet (Puget Sound), no groundwater may be taken for domestic, agriculture or any use that may be considered harmful for human use or the environment.
2. A greater portion of the Property may contain petroleum contaminated soil that is above Method A or B residential Cleanup Levels and is located under the building's concrete pad which covers 95% of the Property. The owners shall not alter, modify or remove the existing structure in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology.

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Section 6. The Owners must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owners shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

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ROCK E. CLEY

COVEN #23.00 Kitsap Co. WA

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Section 8. The Owners of the Property reserve the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

OWNERS:

ESTATE OF JOHN SHIACH

Michael Shiach
Michael Shiach, executor

Elve P. Fathers
Elve Fathers, a widow

COLVOS PROPERTIES, a Trust

John H. Caley
John H. Caley, Trustee

STATE OF Maine

COUNTY OF Washington

I certify that I know or have satisfactory evidence that Michael Shiach, executor, Estate of John Shiach is the person who appeared before me and said persons acknowledged they signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes herein mentioned in this instrument.

Dated this 5th day of July 2003

Linda A. McLaughlin
Notary Public in and for the State of Maine
Residing at Calais

Commission Expires LINDA A. MCLAUGHLIN, NOTARY PUBLIC
MY COMMISSION EXPIRES AUGUST 11, 2004



ROCK E CALEY

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Kitsap Co, WA

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Elve Fathers, a widow is the person who appeared before me and said persons acknowledged she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes herein mentioned in this instrument.

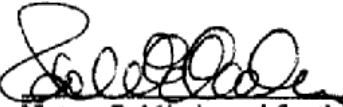
Dated this ___ day of _____ 2003

Notary Public in and for the State of Washington
Residing at _____ Commission Expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that John H. Caley, Trustee Colvos Properties, a Trust is the person who appeared before me and said person acknowledged he signed this instrument and acknowledged it to be the free and voluntary act of the Trust for the uses and purposes herein mentioned in this instrument.

Dated this 19 day of July 2003


Notary Public in and for the State of Washington
Residing at Port Orchard
Commission Expires: 3/08



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CONSENT OF NEW OWNERS

THE UNDERSIGNED, Darvin and Mori Ecklund, purchased the described property known as 624 and 626 Bay Street Port Orchard, WA. on or about _____ 2004. The purchasers have read and consented to the terms and intent of the Restrictive Covenant to which this Consent is attached.

Darvin Ecklund
Darvin Ecklund

Mori Ecklund
Mori Ecklund

Address: 3381 SW CHRISTMAS TREE LN.
Port Orchard, WA

October 18, 2004



ROCK E CALEY

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6.5 Photo log

Photo 1: Front of building - tank location approx. under or near entryway



Photo 2: Side of building



Photo 3: Closer view of entryway area



Photo 4: Building front

